



BRIAN VICENTE, ESQ.
CHRISTIAN E. SEDERBERG, ESQ.
JOSHUA KAPPEL, ESQ.
PHILIP SNOW, ESQ.
SHAWN HAUSER, ESQ.
ALEXA D. TETZLAFF, ESQ. (IL)
STEVE FOX, ESQ., OF COUNSEL

OFFICES IN COLORADO AND MASSACHUSETTS

1244 GRANT STREET
DENVER, CO 80203
(T) 303-860-4501 | (F) 303-860-4505

December 19, 2013

Marla McDade Williams
Deputy Administrator
Division of Public and Behavioral Health

Ms. Williams:

On behalf of Vicente Sederberg LLC, I am submitting the following proposed amendments and suggestions related to the medical marijuana draft regulations circulated by your Division. We appreciate you considering them during the December 23, 2013 public workshop being held to consider changes to the draft regulations.

Proposed amendments

- Add as a new paragraph (perhaps 14) in Section 26: “Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property;” to fulfill the requirement of NRS 453A.322(3)(a)(2)(IV). While it is included in Section 27 as a component of ranking the applications, it should also be included in Section 26, which details the information included in the application itself.
- Change Section 26(6)(b)-(c) to
 - (b) A narrative description, not to exceed 500 words, demonstrating past experience working with government agencies and demonstrating past community involvement; and
 - (c) A narrative description, not to exceed 500 words, demonstrating any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions; and
 - (d) A narrative description, not to exceed 500 words, demonstrating any previous experience at operating other businesses or non-profit organizations; and
 - (e) A resume highlighting the following:
 - (1) Any previous experience at operating other businesses or non-profit organizations;
 - (2) His or her educational achievements; and
 - (3) Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions.

These changes, providing for narrative descriptions of two additional areas of interest, will allow for a better evaluation of the qualifications of the applicants.

- Clarification regarding the requests for applications in Sections 27 and 29. Does the limitation [“more than one response,” “only one response”] refer to the entire state, each county, or each locality? Or does it refer to the number of responses related to the number of registration certificates that will be granted? If the restriction on number of medical marijuana establishment applies to each county it should be stated as such. We suggest language along the lines of, *“If the Division receives...more applications in a jurisdiction than the number of medical marijuana establishment registration certificates the Division will issue in that jurisdiction...”*
- Clarification regarding Sections 28 through 33; the terms “*medical marijuana establishment registration certificate*,” “*provisional medical marijuana establishment registration certificate*,” “*provisional registration certificate*,” and even “*provisional license*” are used to describe the Nevada state documents medical marijuana establishment businesses will receive during the approval process. Still, it is often unclear which registration certificate the Division is referring to and exactly when the provisional registration certificate becomes operational. For clarity and consistency, we suggest that the Division make it clear that it will initially issue “provisional medical marijuana establishment registration certificates.” These will enable holders of the provisional certificates to obtain local approval/licensing or demonstrate that they are in compliance with local rules. This will enable provisional certificate holders to commence build-out of their facilities. Then, following state inspection, operators will receive a medical marijuana establishment registration certificate.
- Change Section 33(1) to “*The Division may, ~~upon receipt of an application for prior to~~ issuance of a medical marijuana establishment registration certificate, conduct an investigation...*” If the language is kept as “upon receipt of an application,” it suggests the inspection will take place before the issuance of a *provisional* medical marijuana establishment registration certificate.
- Change to Section 35(1)(b). While we understand the non-transferability of ownership, as well as the Division’s justification behind having owners reapply if there is a change in jurisdiction, we feel that it would be unfair to force a certificate holder to surrender their certificate if a jurisdiction approves an establishment’s move within a jurisdiction that is more than 5 miles. Accordingly, we suggest the following change:
*(b) Any time there is a change in the location of the medical marijuana establishment if:
~~(1) It is a material change that requires the establishment to go through an approval process by a local governmental entity; or~~
~~(2) The new location is more than 5 miles from its original approved location.~~*
- Change Section 40(8) to “*If the fingerprints submitted pursuant to subsection 5 of NRS 453A.332, were submitted to the Division as part of an application for a medical marijuana establishment agent registration card for another ~~dispensary~~ medical marijuana establishment within the previous 6 months, the number of the medical marijuana establishment agent card issued to the person as a result of the application.*”
- Change Section 47(3)(a). This seems to be an unnecessarily harsh provision. We believe this provision, which is not required under the statute, should be removed. In the alternative, it should be changed so that it only applies to persons who are convicted of violating a marijuana-related Nevada statute.
- Change Section 48 to “*1. A violation of any of the provisions of sections 2 to 139, inclusive, of this regulation is grounds for disciplinary action by the Division, up to and including immediate revocation of a medical marijuana establishment registration certificate*

pursuant to subsection 3 of NRS 453A.340.

2. A violation of any of the provisions of sections 2 to 139, inclusive, of this regulation is grounds for disciplinary action by the Division, up to and including immediate revocation of a medical marijuana establishment agent registration card pursuant to subsection 3 of NRS 453A.340."

- *Change Section 57(3)(b)(1) to "A description of the medical marijuana acquired including the amount ~~and strain~~;" as strain will be difficult, if not impossible, for a cardholder or caregiver to determine.*
- *Change Section 57(3)(d)(3) to "The ~~origin and~~ strain of the marijuana seeds or marijuana cuttings." Tracing the "origin" of a plant would be impractical. It does not seem necessary for the purpose of this provision.*
- *Change Section 58(2) to "No more than 10 ounces of marijuana, or edible marijuana or marijuana-infused products containing the equivalent of 40 grams of THC, or any combination thereof, may be transported at any one time from a medical marijuana establishment to a person who holds a valid registry identification card or his or her designated primary caregiver." We understand that the purpose of the original language was to limit the amount of marijuana products transported based on the marijuana (or usable marijuana) contained in them. But we believe this will be difficult to measure. Also, using "usable marijuana" as the standard could lead to producers isolating the THC in order to create potent products that have less "usable marijuana" in them. Since THC is the primary intoxicant in marijuana and since products will be labeled with THC content, using total THC content for marijuana products will be an easier and logical means of setting a limit on products.*
- *Clarification in Section 58(2). We believe you intend this paragraph to set a limit on the amount of marijuana a dispensary agent may deliver to registry identification cardholders – plural – since the possession limit for patients is one ounce (or the equivalent of 2.5 ounces of marijuana in marijuana products). If that is the case, the language should be clarified by changing the end to: "...may be transported at any one time from a medical marijuana establishment to a persons who holds a valid registry identification cards or his or her their designated primary caregivers."*
- *Change Section 68 to "Each medical marijuana dispensary which recognizes a nonresident card pursuant to NRS 453A.364 shall, in addition to the requirements of Section 67:*
 - 1. Verify that the nonresident card has not expired in the state or jurisdiction from which the holder or bearer obtained the nonresident card; and*
 - 2. Before April 1, 2016: have the holder or bearer of the nonresident card sign an affidavit in a form prescribed by the Division which sets forth that the holder or bearer is entitled to engage in the medical use of marijuana in his or her state or jurisdiction of residence;*
 - 3. On or after April 1, 2016: Enter the information it obtains concerning the nonresident card pursuant to NRS 453A.364 and subsection 1 of this section in the verification system of the Division." This will fulfill the pre- and post-4/1/16 requirements of NRS 453A.364(1)(d).*
- *Change Section 73(2) to "Marijuana-infused products in solid or liquid form ~~may~~ must be packaged in plastic four millimeters or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure."*
- *Change Section 77(5), Section 78(1)(f), and any other section referring to cannabinoid profile to "The cannabinoid ~~profile and potency levels and terpinoid profile as determined by the~~*

~~independent testing laboratory~~ of THC and THCA, which may be expressed as a single percentage, CBD and CBDA, which may be expressed as a single percentage, and CBN. The cannabinoid profile must be expressed as a range of percentages that extends from the lowest percentage to highest percentage of concentration for each cannabinoid listed based on every test conducted on that strain of medical marijuana cultivated by the same medical marijuana cultivation facility within the last three months.” This language was taken from Colorado’s new retail marijuana testing regulations and represents the work of a panel of industry and scientific experts in the state with detailed knowledge of cannabinoid testing and science.

- Change the “TLC” in the sample labels in Sections 77 and 78 to “THC.”
- Change Section 79(1)(e) to ~~“Name and~~ *Registry identification card number of the qualified patient, and the name of the designated caregiver, if any;*” This would be modified to protect patient privacy.
- Change Section 125. Given the total number of individuals on the committee (seven), it doesn’t seem like it will work to have, “A representative from each independent testing laboratory in this state,” along with, “A number of representatives from cultivation or productions facilities equal to laboratory representatives in this state.” This should be modified in some manner.
- Clarification regarding the calculating the two and a half ounces of edible medical products and marijuana-infused products in Section 131. A reasonable estimate for the average cannabinoid content of marijuana sold medically is about 14% THC. This would mean two and a half ounces would be roughly equivalent to 10,000 milligrams or 10 grams of THC. As noted in the first bullet related to Section 58, above, this is an optimal way to measure marijuana equivalence in infused-products. Thus, the Section could read: “*For the purposes of subparagraph (3) of paragraph (b) of subsection 3 of NRS 453A.200, the maximum allowable quantity of edible marijuana products and marijuana- infused products is such products containing a total of 10 grams of THC in an amount that is the equivalent of two and one-half ounces of usable marijuana.*”

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Fox'.

Steve Fox
Of Counsel
Vicente Sederberg LLC